In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1117

RAYMOND S. HALL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals affirming the conviction is reported at 342 F. 2d 849 (Pet. App. 12-21). The opinion denying a petition for rehearing (Pet. App. 22-23) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered March 4, 1965. A petition for rehearing was denied

April 1, 1965. The petition for a writ of certiorari was filed April 30, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

At a trial for conspiring to impede a federal agent in the performance of his duties, the government, in order to show motive, introduced evidence that petitioner, a policeman, had taken a bribe, before the conspiracy was formed, from the agent, who was working in an undercover capacity. Petitioner had been acquitted in a State court of a charge of accepting this bribe. The questions presented are:

1. Whether the federal trial for impeding the federal officer after the State acquittal on the bribery charge constituted a denial of due process or a violation of the guaranty against double jeopardy.
2. Whether, on principles of collateral estoppel, the federal court should have declined to receive any evidence with respect to the bribe.

STATEMENT

Petitioner was convicted in the United States District Court for the Western District of Virginia of conspiring with one Dail Jackson to impede and injure a federal agent in the performance of his duties, and was sentenced to imprisonment for four years.

The direct evidence of the conspiracy came from co-conspirator Jackson. He testified that he had been selling bootleg whiskey to one Harris and that this

whiskey was being picked up by a man he knew as Anderson. On March 19, 1965, he told petitioner, a Danville policeman, that he had heard that Anderson was a federal agent and that Harris was working for the government. Jackson testified that he went to petitioner, whom he had known for a long time, for advice. Petitioner told Jackson to try to sell more whiskey to the two men and then notify petitioner, who would be there when they picked up the whiskey and would "take care" of the matter (Tr. 124-136). Jackson thereafter attempted to locate both Harris and the agent but was unsuccessful because both of them had left Danville.

In addition to this evidence, the government, to show petitioner's motive to impede the agent, introduced evidence, including a mechanical recording, to the effect that on March 18—the day before the above conversation—the government agent, in his undercover capacity, had paid petitioner a bribe of $50. Before the federal trial, petitioner had been acquitted in a State court on a charge of taking this bribe. (See Pet. App. pp. 27-32, 41-44, 52-59, 67-71).

The Court of appeals affirmed the conviction, holding, among other things that the "jury could reasonably infer from Hall's statement that he would 'take care of it' if Jackson could arrange for a sale of whiskey to [the agent] and Harris and advise him of the pickup place that Hall planned at least to interfere with the discharge by [the agent] of his official duties by arresting him and perhaps that he had in mind harming [the agent] physically" (Pet. 14-15).

Petitioner, through new counsel, filed a petition for rehearing in which he contended that his federal trial, after his State acquittal on the bribery charges, violated the Double Jeopardy and Due Process clauses, and that the evidence of the bribery should have been excluded on principles of collateral estoppel. The court of appeals rejected these contentions in denying the petition for rehearing. It is these issues which petitioner raises in the petition for a writ of certiorari.

ARGUMENT

1. No issue is presented here as to the sufficiency of the evidence. Moreover, the question which petitioner does seek to raise—whether this Court should reconsider its ruling in *Bartkus* v. *Illinois*, 359 U.S. 121, that successive State and federal prosecutions arising out of the same transaction do not violate double jeopardy or due process—is not actually presented by the record. The federal prosecution for conspiracy to impede a federal officer did not arise out of the same transaction and was not for the same offense as the State bribery charge. It is true that there was evidence of the bribery at the federal trial, but this was only to show petitioner's motive in forming the conspiracy to impede. The plan to "take care" of the federal officer did not even come into being until after the bribery had occurred; petitioner, at the time he accepted the bribe, did not know that the man with whom he was dealing was a federal officer. It was only when he later discovered that fact that he planned to take action against the federal officer. Thus, even if the bribery had been a

federal offense, an acquittal on such charge would not have barred the instant prosecution. *Sealfon* v. *United States*, 332 U.S. 575.

2. There is no basis in this case for the application of the doctrine of collateral estoppel to prevent the federal government from offering evidence of the bribe to show petitioner's motive. Whatever the scope of the constitutional guaranty against double jeopardy as affecting successive State and federal prosecutions, it cannot be said that the State and the federal government are the same party. The principle of collateral estoppel applies only when the parties in the prior proceeding were the same. *Drummond* v. *United States*, 324 U.S. 316, 317-318.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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